BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

BAHRAM SADEGHI Claimant VS. DIXON TOM-A-TOE Respondent))) Docket No. 190,229)
SAFECO INSURANCE COMPANIES Insurance Carrier	

ORDER

Respondent appeals from a July 14, 1994, Preliminary Order granting medical benefits. The Appeals Board heard oral argument on August 16, 1994.

APPEARANCES

Claimant appeared by his attorney, Daniel L. Smith of Overland Park, Kansas. The respondent and its insurance carrier appeared by their attorney, Gary R. Terrill of Overland Park, Kansas. There were no other appearances.

Issues

On appeal respondent contends claimant has failed to prove his injury arose out of and in the course of his employment.

IT IS SO ORDERED

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

- (1) On an appeal from a preliminary order, the Appeals Board does have jurisdiction to review a finding that an injury arose out of and in the course of his employment. K.S.A. 44-534a.
- (2) Claimant has established by a preponderance of the credible evidence that his injury arose out of and in the course of his employment.

Claimant testified that he injured his knee when he was thrown off the pallet jack he was operating to unload a truck at Associated Grocers Warehouse. Emergency room records reflect the same history. Respondent countered with the testimony of an Associated Grocer employee who testified he saw claimant after the alleged injury and noticed nothing in claimant's movements to suggest an injury. He also testified the pallet jack had become unplugged and could not have become unplugged by the accident claimant described. This witness was unable, however, to identify claimant at the hearing and initially gave the wrong dock number as the location where he had seen claimant.

The Appeals Board finds it more probable than not that claimant's injury did arise out of and in the course of his employment as alleged. Accordingly the July 14, 1994, Order for medical benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 14, 1994, Preliminary Hearing Order by Administrative Law Judge Steven J. Howard should be, and is hereby, affirmed.

II IO OO ONDENED.		
Dated this day of I	December, 1994.	
	BOARD MEMBER	
	BOARD MEMBER	

BOARD MEMBER

c: Daniel J. Smith, Attorney at Law, Overland Park, KS 66211 Gary R. Terrill, Attorney at Law, Overland Park, Ks 66282 Steven J. Howard, Administrative Law Judge George Gomez, Director